

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

OPERATIVE PLASTERERS AND CEMENT
MASONS LOCAL NO. 29 ANNUITY FUND,
WELFARE FUND, APPRENTICE TRAINING
FUND, and MARC GALLO, Trustee,

Plaintiffs,

v.

INDUSTRIAL CONSTRUCTION OF NEW
JERSEY, INC.,

Defendant.

Case No. 20cv10278 (EP) (JSA)

MEMORANDUM ORDER

PADIN, District Judge.

Plaintiff Operative Plasterers and Cement Masons Local No. 29 Annuity Fund, Welfare Fund, and Apprentice Training Fund (the “Funds”); and Plaintiff Marc Gallo, a member of the Board of Trustees and a fiduciary of the Funds (collectively, “Plaintiffs”), allege that Defendant Industrial Construction of New Jersey, Inc. breached the parties’ collective bargaining agreement by failing and refusing to make timely required contributions to the Funds. D.E. 11. Plaintiffs now move for a turnover of money in Defendant’s bank account. D.E. 36 (“Mot.” or “Motion”). For the reasons below, the Court will **GRANT** the Motion.

I. BACKGROUND

On September 27, 2022, the parties executed a settlement agreement (“Settlement”). D.E. 32-1 ¶ 3. Pursuant to the Settlement, Defendant agreed to pay a total debt to the Funds of \$191,007.75. *Id.* Defendant made payments totaling \$94,970.37 through February 2023 and then stopped making payments. *Id.* ¶ 4. Accordingly, Plaintiffs moved for default judgment as to the

Settlement, D.E. 32, which Judge Vasquez¹ granted, entering a judgment of \$96,037.38 against Defendant, D.E. 33. Defendant has failed to satisfy the judgment. D.E. 36-1 ¶ 3.

On October 10, 2023, Plaintiffs requested a writ of execution on Defendant's bank account at BCB Bank ("BCB Account"). D.E. 34. Subsequently, on October 20, 2023, the United States Marshals Service of Newark, New Jersey made a levy of \$14,764.00 on the BCB Account ("BCB Funds"). D.E. 35. Plaintiffs now move for a turnover of the BCB Funds. Defendant and BCB Bank were separately served with the Motion. D.E. 36-1 ¶ 5. Neither has opposed.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 69(a)(i) provides that "[a] money judgment is enforced by a writ of execution[]" The execution procedure is governed by "the procedure of the state where the court is located, but a federal statute governs to the extent it applies." *Id.*

III. ANALYSIS²

A turnover order "is a mechanism that direct[s] a bank holding the debtor's funds to pay those funds over to creditors rather than to the debtor." *In re Paul*, 2013 WL 3446994, at *2 (D.N.J. July 9, 2013). "To obtain a[turnover order], a plaintiff must follow the proper procedure." *Super 8 Worldwide Inc. v. Nirgam Enters., LLC*, 2023 WL 1360135, at *2 (D.N.J. Jan. 30, 2023). First, there must be an "issuance of a writ of execution for the purpose of a levy."³ *In re Paul*, 2013 WL 3446994, at *2. After a writ of execution is issued, a judgment-creditor must move for a turnover of the funds. *Super 8*, 2023 WL 1360135, at *2. Once "there has been a levy on a debt due [to] a judgment[-]debtor and the garnishee admits the debt[.]" a turnover motion should be

¹ This matter was reassigned to the undersigned on November 9, 2023.

² The Court applies New Jersey law. *See supra* Section II.

³ A writ of execution is valid for two years. *Super 8*, 2023 WL 1360135, at *2.

granted. *Id.* (cleaned up) (citing N.J. Stat. Ann. § 2A:17-63 (West 2022)). A garnishee admits the debt “[i]f service is properly made and no objection is filed” *Id.* at *3 (citation omitted).

Here, Plaintiffs are entitled to a turnover of the BCB Funds. On October 10, 2023, Plaintiffs requested a writ of execution on Defendant’s BCB Account. D.E. 34. The United States Marshals Service of Newark, New Jersey then made a levy of \$14,764.00 on the BCB Funds on October 20, 2023. D.E. 35. Plaintiffs then moved for a turnover of the BCB Funds. *See* Mot. And BCB Bank, as garnishee, “admitted the existence of the debt within the meaning of N.J. Stat. Ann[.] § 2A:18-27 by failing to object to turning over” the BCB Funds. *Super* 8, 2023 WL 1360135, at *3.

IV. CONCLUSION AND ORDER

For the reasons above,

IT IS, on this **19th** day of **January**, 2024,

ORDERED that Plaintiffs’ Motion, D.E. 36, is **GRANTED**; and it is finally

ORDERED that the sum of \$14,764.00 be turned over from Defendant’s BCB Account to the United States Marshals Service of Newark, New Jersey pursuant to a levy made on October 20, 2023, D.E. 35, as judgment remains unpaid to the extent of \$96,037.38.

Dated: January 19, 2024



Evelyn Padin, U.S.D.J.